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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC024

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Training Exercises in Three East Coast Range Complexes

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of three modified Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued three Letters of Authorization (LOAs) to take marine mammals by harassment, incidental to the U.S. Navy's training activities within the Virginia Capes (VACAPES), Jacksonville (JAX), and Cherry Point (CHPT) Range Complexes to the Commander, U.S. Fleet Forces Command, 1562 Mitscher Avenue, Suite 250, Norfolk, VA 23551-2487 and persons operating under his authority.

DATES: Effective from June 5, 2012, through June 4, 2014.

ADDRESSES: Copies of the Navy's request for LOAs, the Navy's 2011-2012 marine mammal monitoring report and the Navy's 2011-2012 exercise report are available by writing to Tammy C. Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contact listed here (SEE FOR FURTHER INFORMATION CONTACT), or online at:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS (301) 724-8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's training activities at the VACAPES, JAX, and CHPT Range Complexes were published on June 15, 2009 (VACAPES: 74 FR 28328; JAX: 74 FR 28349; CHPT: 74 FR 28370) and remain in effect through June 4, 2014. They are codified at 50 CFR part 218 subpart A (VACAPES), subpart B (JAX), and subpart C (CHPT). These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the Navy's range

complex training exercises. For detailed information on these actions, please refer to the June 15, 2009 Federal Register Notices and 50 CFR part 218 subparts A, B, and C.

An interim final rule was issued on May 26, 2011 (76 FR 30552) to allow certain flexibilities concerning Navy's training activities at VACAPES and JAX, and LOAs were issued to the Navy on June 1, 2011 (76 FR 33266; June 8, 2011). These LOAs were subsequently modified on January 6, 2012, to allow takes of marine mammals by using time-delayed firing devices (i.e., detonation is controlled by a time-delaying devices instead of being promptly executed) with improved monitoring and mitigation measures (77 FR 2040; January 13, 2012).

On February 12, 2012, NMFS published a final rule (77 FR 4917) that allows for the issuance of multi-year LOAs, as long as the regulations governing such LOAs are valid, and finalized the May 26, 2011 interim rule.

Summary of LOA Request

On January 19, 2012, the Navy submitted an application to take marine mammals incidental to training activities at VACAPES, JAX, and CHPT Range Complexes under the regulations issued on June 15, 2009 (VACAPES: 74 FR 28328; JAX: 74 FR 28349; CHPT: 74 FR 28370) and modified on February 12, 2012 (77 FR 4917). The application requested authorization for two years, to take marine mammals by harassment, incidental to proposed training activities that involve the use of underwater detonations and the use of time-delay firing devices, as described in the January 13, 2012 Federal Register notice announcing the issuance of modified LOAs (77 FR 2040).

Summary of Activity under the 2011 VACAPES, JAX, and CHPT LOAs

As described in the Navy's Annual Range Complex Exercise Report for the NAVSEA VACAPES, JAX, and CHPT Range Complexes, between January 2, 2011, and January 1, 2012,

the training activities conducted by the Navy were within the scope and amounts contemplated by the final rule and identified by the 2011 LOAs. A detailed description of the Navy's 2011 training activities can be found in the exercise reports posted on NMFS website:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Planned Activities for 2012-2014

In 2012 through June 2014, the Navy expects to conduct the same type and amount of training activities identified in the final rules and 2011 LOAs, including the use of time-delay firing devices. No modification is proposed by the Navy for its planned 2012-2014 activities.

Estimated Take for 2012-2014

The estimated takes for the Navy's proposed training activities are the same as those contemplated in the regulations and authorized in the 2011 LOAs.

Summary of Monitoring, Reporting, and other requirements under the 2011 LOA

Annual Exercise Report

The Navy submitted its 2011 exercise reports within the required timeframes and it is posted on NMFS website: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. NMFS has reviewed the report and it contains the information required by the 2011 LOAs. The reports list the amount of training activities conducted between January 2, 2011 and January 1, 2012.

Specifically, at the VACAPES Range Complex, the Navy conducted 14 5-lb charge, 28 10-lb charge, and 3 20-lb charge mine exercise (MINEX); 5 Mk-82 (500 lb bomb) Air-to-Surface Bombing Exercises (BOMEX); 28 AGM-114 (Hellfire missile) exercises and 1 AGM-65 (Maverick missile) exercise (MISSIEX); and 13 5" explosive Naval gunfire exercises (FIREX with IMPASS). No AGM-88 (HARM missile) and MK-83/GBU-32 (1,000 lb bomb) exercise was conducted during the reporting period.

At the JAX Range Complex, the Navy conducted 9 AGM-114 (Hellfire missile) exercises and 3 AGM-65 (Maverick missile) exercises; and 6 FIREX with IMPASS. No MINEX and no Small Arms Training was conducted during the reporting period.

At the CHPT Range Complex, the Navy conducted only one FIREX with IMPASS. No other exercise (MINEX and MISSIEX) was conducted.

Monitoring and Annual Monitoring Report

The Navy submitted their 2011 annual marine mammal monitoring reports covering the period from January 2, 2011, through January 1, 2012, and the reports are posted on NMFS website: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. The Navy conducted the monitoring required by the 2011 LOAs and described in the Monitoring Reports.

For training exercises at the VACAPES Range Complex, the Navy implemented vessel and aerial surveys and deployed passive acoustic monitoring (PAM) devices. The monitoring efforts for 2011 were conducted within the mine neutralization exercise (MINEX) W-50 box in conjunction with a MINEX event, and the Firing Exercise (FIREX) 7C/7D training boxes in conjunction with a FIREX event.

A vessel survey was conducted on July 14, 2011, in association with a FIREX with IMPASS training event off the coast of Virginia. Four marine mammal observers (MMOs) were stationed aboard a Navy vessel. No marine mammal species were sighted. Vessel surveys were also conducted in association with a MINEX training event off the coast of Virginia Beach, Virginia. Seven MMOs were stationed aboard a Navy vessel. Surveys were conducted on August 7 – 9, 2011 before, during, and after the training event. During the 3-day monitoring trip, a total of 19 bottlenose dolphin sightings including approximately 91 – 149 individuals were recorded by the Navy MMOs. No injuries or mortalities of marine mammals were observed

during the MINEX training. No marine mammal was sighted between 30 minutes pre-detonation and 30 minutes post-detonation. In addition, aerial surveys were conducted in association with a FIREX training event with IMPASS off the coast of Virginia. Line-transect surveys were conducted on July 13 – 15, 2011, before, during, and after the training event. Three sightings of marine mammals were made during the 1-day pre-FIREX survey; two sightings of marine mammals were recorded throughout the 1-day during FIREX survey period; and four sightings of marine mammals were recorded during the 1-day post-FIREX survey. No injuries or mortalities of marine mammals were observed during the FIREX training event on July 14. No live explosive rounds were used during the FIREX training. Therefore, no animals were exposed during this VACAPES FIREX with IMPASS training event. Finally, acoustic buoys were deployed on August 7 and 8, 2011, to monitor marine mammal vocalization activity before, during, and after the MINEX event. Six buoys were deployed on both days. Total successful recording time was approximately 38.3 hours, which included 22.75 hours on August 7 and 15.5 hours on August 8. A preliminary analysis of the acoustic recordings was performed on the August 8 data using 1-minute spectrogram window, which showed some odontocete whistles. Based on earlier sightings from that day, the Navy stated that the vocalizations are most likely from bottlenose dolphins.

For training exercises at the JAX Range Complex, aerial surveys were conducted in association with a FIREX training event with IMPASS off the coast of Georgia and Florida. Line-transect surveys were conducted on September 19-21, 2011, before, during, and after the training event. No sightings of marine mammals were recorded during these surveys.

For training exercises at the CHPT Range Complex, aerial surveys were conducted in association with a FIREX with IMPASS training event off the coast of North Carolina. The pre-

FIREX line-transact survey on November 29, 2011, was cancelled due to poor weather and low ceiling conditions. No sightings of marine mammals were recorded during the 1.4 hours of total survey flight time (includes on-effort and off-effort intervals) within the survey area covering a 1-day period (November 30, 2011). One large unidentified whale was briefly seen approximately 18 km south of Lookout Bight, North Carolina (approximately 100 km outside of the survey area) on the transit back to the airport.

Adaptive Management

In general, adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) if monitoring efforts should be modified if new information suggests that such modifications are appropriate. All of the 5-year rules and LOAs issued to the Navy include an adaptive management component, which includes an annual meeting between NMFS and the Navy. NMFS and the Navy conducted an adaptive management meeting in October, 2011, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2011, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring.

No changes were requested from the Navy for the 2012-2014 LOAs for VACAPES, JAX, and CHPT Range Complexes.

Authorization

Since there are no changes in the Navy's proposed training activities at the VACAPES, JAX, and CHPT Range Complexes, NMFS' determination that the Navy's training activities at these Range Complexes will have no more than a negligible impact on the affected species or

stocks of marine mammals in the action area, as described in the original regulations and the interim regulations, is still valid. There is no subsistence use of marine mammals that could potentially be impacted by the Navy's training activities at the VACAPES, JAX, and CHPT Range Complexes. Further, the level of taking authorized in June 2012 through June 2014 for the Navy's VACAPES, JAX, and CHPT Range Complexes training activities is consistent with our previous findings made for the total taking allowed under the regulations and interim regulations for these Range Complexes. Accordingly, NMFS has issued three two-year LOAs for Navy's training activities conducted at the VACAPES, JAX, and CHPT Range Complexes from June 5, 2012, through June 4, 2014.

Dated: May 21, 2012.

Helen M. Golde,
Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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